

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ANDREW GARNER,

Defendant.

17-CR-49-V
ORDER

Defendant Andrew Garner is charged in an indictment with conspiring to distribute cocaine, methamphetamine, and marijuana in violation of 21 U.S.C. § 846; three counts of distributing cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C); possessing cocaine with the intent to distribute it in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C); possessing marijuana with the intent to distribute it in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C); and maintaining a drug involved premises in violation of 21 U.S.C. § 856(a)(1) and 18 U.S.C. § 2. See Docket Item 1.

On July 21, 2017, Garner filed omnibus motions, including motions to dismiss the indictment and to suppress evidence. See Docket Item 27. On August 4, 2017, the government filed its response. See Docket Item 32. After a series of adjournments and the assignment of new counsel to represent Garner, Magistrate Judge Michael J. Roemer heard oral argument on Garner's motions to dismiss and to suppress on November 15, 2017. On November 30, 2017, Judge Roemer issued a Report, Recommendation and Order (R&R), deciding Garner's non-dispositive motions and recommending the denial of his motions to dismiss and to suppress. See Docket Item 58. Specifically, Judge Roemer found that Garner's motion to dismiss the indictment

was premised on a supposed lack of evidence, which is not a basis for dismissal at this stage of the action. See Docket Item 58. With respect to Garner's motion to suppress evidence, Judge Roemer noted that the search was conducted pursuant to a warrant and found that the Jamestown City Court Judge had good reason to conclude that there was probable cause to search the basement apartment. *Id.*

The deadline for filing objections to the R&R was extended to January 17, 2018. See Docket Item 60. But Garner still did not object to the R&R, and the time to object has now expired. For that reason, Garner has waived his right to have the Report and Recommendation reviewed. See Fed. R. Crim. P. 59(b)(2) ("Failure to object in accordance with this rule waives a party's right to review."); see *also* Docket Item 58 at 15.

Nevertheless, in its discretion, this Court has carefully reviewed the R&R (Docket Item 58). Based on that review and the absence of any objection, and for the reasons stated in the R&R, this Court adopts the R&R in its entirety. Garner's motions to dismiss and to suppress are DENIED.

SO ORDERED.

Dated: February 11, 2018
Buffalo, New York

s/Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE